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ON *πείραρ* *έλέσθαι* (Σ 501) AND THE MANUS CONSERTIO OF THE ROMANS.

BY FREDERIC D. ALLEN.

Πείραρ 'rope' and *πείραρ* 'end'—these words (or meanings, if you will, of the same word) the expounder of Homer has much ado to apportion justly. But of several crucial passages involved, the most difficult is certainly that in the description of the Shield of Achilles, Σ 497 ff. :—

λαοὶ δ' εἰν ἀγορῇ ἔσαν ἀθρόοι · ἔνθα δὲ νείκος
ὠρώρει · δύο δ' ἄνδρες ἐνέικον εἵνεκα ποιότης
ἀνδρὸς ἀποκταμένου · ὁ μὲν εὔχετο πάντ' ἀποδοῦναι,
500 δῆμῳ πιφαύσκων, ὁ δ' ἀναίνετο μηδὲν ἐλέσθαι ·
ἄμφω δ' ἰέσθην ἐπὶ ἵστορι πεῖραρ ἐλέσθαι ·
λαοὶ δ' ἀμφοτέροισιν ἐπήπνον, ἀμφὶς ἀρωγοί.

Almost every one resorts to the meaning 'end.' 'Πέρασ λαβεῖν,' 'finire litem,' 'take an issue,' 'accept a decision,' 'obtain consummation,' 'Ziel d. i. Entscheidung gewinnen' are translations given. The ancients usually took *ἵστορι* as *μάρτυρι* ('by the aid of a witness'), explaining that τὸ τέλος τῆς δίκης οἱ δικασταὶ ἐτίθεντο ὥστε τὸν παρέχοντα μάρτυριαν νικᾶν (Schol. A). Modern scholars oftener understand it as 'umpire,' 'referee'; it certainly has this sense in Ψ 486.

But whichever meaning of *ἵστορι* we adopt, the interpretation is forced. Supposing for the moment that *πείραρ* can mean 'decision,' still *ἐλέσθαι* is not an appropriate word.¹ It implies, especially as reinforced by *ἰέσθην*, much too *active* a taking.² *Πείραρ* *ἰέσθαι* would be a more suitable phrase. It would perhaps be captious to ask how

¹ Zenodotus wrote *ἀρέσθαι* here (or was it in 500?), but this affords no relief.

² This is not disproved by the foregoing verse, where, as in ο 367, ξ 297, ω 334, *ἐλέσθαι* is idiomatically used (like *toucher* in French) of the receipt (taking possession) of moneys due. The meaning is probably 'he refused to lay hands on a single sheep.' I incline to accept Leaf's exposition of this passage, *ἀναίνετο* being best taken as = 'recusabat.'

a longing to 'accept a decision' on the part of two wranglers could find expression in sculpture. It is, however, a pertinent inquiry whether just this would be the 'eager longing' of a man engaged in a public quarrel, backed by a crowd of shouting adherents.

These difficulties must have occurred to others, and I do not doubt that many have felt what only Doederlein (Homer. Glossar., vol. II, p. 138) has spoken,—that these words naturally mean 'seize the rope in presence of an umpire.' But what rope? A metaphorical rope, Doederlein answered. Rope-pulling, he thought, was used as a figure for a judicial contest, just as it is elsewhere in Homer for a battle; 'seize the rope,' meant 'begin the trial.' A harsh and abrupt metaphor, surely. I should prefer it to the usual explanation, but I cannot think it satisfactory.

But need the phrase be figurative? I propose, with diffidence, to take it literally. In support of this I can offer only an hypothesis, based on rather remote analogies. It makes no claim to be considered as a proof. I would translate verse 501 'and both were hastening to grasp the rope before the umpire.' The rope-grasping I conceive as a symbolical act, typifying an actual bodily contest, and preliminary to a trial before judges,—analogous, in short, to the ceremony called *manum conserere* among the Romans.

Pulling-matches must have been familiar to the Homeric Greeks. The conception of a battle as a rope-pulling between Trojans and Achaeans, with gods at the extremities of the line, meets us more than once in the *Iliad*.¹ Of course some actuality furnished the basis for this metaphor. It may have been a mere game or gymnastic exercise. In later times there were such games. In that called *διελκυστίνδα*, mentioned by Pollux (IX, 112), *δύο μοῖραι παίδων εἰσὶν ἔλκονσαι τοὺς ἑτέρους οἱ ἕτεροι*. A rope is not mentioned here, but in another variety of the game described by Pollux (IX, 116), Photius, Hesychius and Eustathius,² under the name of *σκαπέρδαν ἔλκειν*, a rope is passed through a hole in a post, and two men, back to back, pull on the ends. A simple "tug of war" between two youths, with a short rope provided with handles, is depicted on a gem in Florence (Krause, *Gymnastik und Agonistik*, plate VI, 1^a).

But this game may once have been more than a game. Organized

¹ H 102, and elsewhere. See below, p. 165.

² On P 389 (p. 1111, 24).

pulling-contests for the decision of controversies are not unknown in primitive society. It will be remembered that Zeus proposes such an one at © 19, to settle the question of superiority between himself and the other gods. The trial suggested in this famous passage is only a "tug of war" with the advantage of gravity on one side. I give such other instances as I have been able to come by; it is very likely that others exist and can be pointed out by those versed in folklore. In the Pāli version of the story of Solomon's judgment the "Future Buddha" (Bodhisatha) finds two women quarrelling about the possession of a child. He proffers his services as umpire, and they agree to abide by his decision. "Then he had a line drawn on the ground, and told the Yakshini to take hold of the child's arms and the mother to take hold of its legs, and said 'the child shall be hers who drags him over the line.'" ¹ Mr. James Deans ² relates that in Hoiduk Land, Queen Charlotte's Islands, Indians of different tribes used often to unite in killing a whale. Possession was then decided in the following manner. Cedar-bark ropes were fastened to head and tail. "When all was ready, at a given signal, every man pulled with might and main, the representatives of each tribe by themselves pulling in a different direction to the others. The tribe who pulled the whale furthest were the victors. . . . The winning party took the spoil home to their village . . . ; the losing party good-naturedly started for their homes, well knowing it might be their lot to be victorious in the next pull they had." I suspect from the context that "pulling" here means rowing, but the principle is the same. A curious pulling-match is reported from among the Eskimo. The community divides itself into two parties, the "ptarmigans," those who were born in the winter, and the "ducks," or children of summer. "A large rope of sealskin is stretched out. One party takes one end of it and tries with all its might to drag the opposite party over to its side. The others hold fast to the rope and try as hard to make ground for themselves. If the ptarmigans give

¹ T. W. Rhys Davids' "Buddhist Birth Stories," vol. I, pp. xiv-xvi. I am indebted to Professor Lanman for this instance, and to Mr. W. W. Newell for the three following. Dr. Hayley remembers an account, in the narrative of an African explorer, of an organized pulling-match for the possession of a woman, in which the woman sustained such injuries that she died; but he is unable to furnish the reference at present.

² American Antiquarian, vol. X (1888), p. 42.

way, the summer has won the game, and fine weather may be expected to prevail through the winter.”¹ This is perhaps little more than a game, though it appears that a religious significance is attached to it.² More to the point is the method by which the Passamaquoddy Indians of Maine decided between rival claimants of the chieftainship. “If there were two candidates, the matter was decided by the candidates’ joining hands over a mark drawn between them, their adherents forming two lines by each clasping his arms round the waist of the one in front of him. The party which succeeded in pulling the opposition candidate across the mark had the right to elect the chief.”³

We have here pulling with and without a rope; and we have — it will be further observed — both the pulling of the object in dispute, and a pulling pure and simple to decide an abstract question. These pullings are no more absurd than the old European trial by combat; in fact they are simply mild and bloodless forms of such a trial. We might suppose our Homeric rope-seizing to be an actual pulling-match for the settlement of the dispute, did the description end with the passage I have quoted above. But there follows a further description, apparently representing a new relief on the shield, which shows us a later stage of the same proceedings. Here a court of justice, consisting of *γέροντες*, is trying the cause. The description is not very clear, and the exact meaning of several phrases is in doubt. But it is certain that no such rudimentary justice as rope-pulling is there dispensed. I have therefore imagined the rope-seizing to be symbolic, — a purely formal contest, to furnish the needed ground for a magistrate’s interference. For this we have the significant analogy of Roman judicial procedure.

The theory of the Roman *legis actio* was, as Maine has convincingly shown, that a magistrate must see a quarrel going on before he could interfere. When litigants appeared before him, therefore, the first step was the enacting of a sort of mimic contest, called *vindicatio*.

¹ F. Boas, in the Sixth Annual Report of the Bureau of Ethnology, p. 605.

² Mannhardt, *Zeitschrift für deutsche Mythologie*, vol. 4 (1859), p. 301 ff., interprets our children’s pulling-games (“London Bridge” and the like) as originating in religious notions of a contest between the powers of light and darkness for the possession of souls.

³ Mrs. W. Wallace Brown, in the *Journal of American Folklore*, V. 57, Jan.-Mar., 1892.

Gaius, IV, 16, gives in full the formalities employed in case the object in dispute was a movable chattel, like a slave. Both parties laid hold of the slave, each in turn touched him with a stick (*festuca, vindicta*), and claimed him in a form of words. The magistrate then said *mittite ambo hominem*, and both loosed their hold. Then further parley, which does not concern us. We are not told that they pulled the man, but the joint seizure certainly seems to typify pulling, and we are told that the stick represented a weapon. So much for movable property; now how about immovables, which could not be brought into court? Gaius goes on to make provision for these (IV, 17) in a passage which is incomplete, as a leaf of the book is gone. He says that a *part* of the object was brought before the magistrate, — a tile from a house, a clod from a farm, etc., — and that proceedings went on as over the whole (*in eam partem perinde atque in totam rem praesentem fiebat vindictio*). But this cannot be the whole of the story, at least as regards land. For we happen to hear from two other sources, Gellius XX, 10 (a vexed and vexing passage), and Cicero pro Murena 12, 26, about another act, performed at the land itself. Respecting this act the practice was different at different epochs. The old and simple way was for the praetor to go to the spot himself to be present at the ceremony. Then when distances became too great and magistrates too busy, the litigants went there with witnesses to perform the ceremony, and came back into court.

Now what was done at the land? The ceremony was called, we know, *manum conserere*. Just in what it consisted we shall inquire presently, but I wish first to enforce the point — not generally recognized — that the *manus consortio*¹ applied only to land, or to land and other immovables. For observe first that it was something done out of court. The phrase *ex iure* invariably accompanies it, wherever it is mentioned.² The locution *in iure manum conserere* was evidently unknown to Gellius, except as an antiquity in the Twelve Tables. Now a thing done out of court could not apply to movables,

¹ We may allow ourselves this phrase, as a convenience, although it occurs in no ancient writer.

² Thus in the well-known passage of Ennius quoted Gell. XX, 10, 4 (and by Cicero in two places); in Varro L. L. VI, 64; Cic. de Orat. I, 10, 41; pro Murena 12, 26; Gell. XX, 10, 1 and 9; Probus in Keil's Gram. Lat. IV, p. 273; these (with Lactant. Inst. I, 1, 12) being all the occurrences.

for movables, Gaius tells us, were always brought into court. Secondly, both in Gellius and in Cicero's Murena—the only places which show anything about the application of the phrase—the talk is solely of land-litigation. When, as in Decemviral times, the act was performed *in iure*, it still had reference to land, for Gellius evidently means that the praetor went to the spot. And even in a third passage, Cicero de Orat. I, 10, 41, where the phrase is employed in a bantering metaphor (*te ex iure manum consertum vocarent quod in alienas possessiones tam temere intruisses*), the figure is that of a trespass on land. Finally, any remaining doubt should disappear on a comparison of the Murena passage with Gaius's description of the vindication of movables. I print the two dialogues side by side. Cicero, it must be understood, is quoting in a touch-and-go fashion, simply to illustrate useless legal verbiage.

GAIUS.

A. [*holding the slave*]. Hunc ego hominem ex iure Quiritium meum esse aio secundum suam causam. Sicut dixi, ecce tibi, vindictam inposui. [*Touches him.*]

B. [*also holding the slave*]. Hunc ego hominem, etc., etc. [*Touches him.*]

PRÆTOR. Mittite ambo hominem.

A. Postulo anne dicis qua ex causa vindicaveris.

B. Ius peregi sicut vindictam inposui.

CICERO.

A. Fundus qui est in agro qui Sabinus vocatur . . . eum ego ex iure Quiritium meum esse aio.

[*B. repeats the same formula.*]

A. Inde ibi te ex iure manu consertum voco.

B. Unde tu me ex iure manu consertum vocasti, inde ibi te revoco.

PRÆTOR. Suis utrisque superstibus¹ praesentibus istam viam dico. Ite viam. [*They go.*] Redite viam. [*They return.*]

A. Quando te in iure conspicio, . . . anne tu dicis qua ex causa vindicaveris?

[*B. Answer not given.*]

¹ Compare Festus, p. 305 M.: *superstites testes praesentes significat, cuius rei testimonium est quod superstibus praesentibus i, inter quos controversia est, vindicias sumere iubentur.* For the meaning of *vindicicias sumere*, see p. 161 below.

No one can help seeing from this correspondence that *manus consortio* was to land what joint seizure and touching with the wand was to movable property, and that it was done out of court because it had to be done at the land itself.

The point established that "consertion of the hand" pertained to immovable property only, let us ask next in what the act consisted. We ought to know this from the chapter of Gellius (XX, 10) which has already been several times referred to, for Gellius wrote this chapter on purpose to tell us, and there is in it a passage evidently meant to give an explanation of the phrase. In its present shape, however, it passes the human understanding; one may read and re-read it, and still ask himself what *manum conserere* really was. We shall have to attack this perplexing passage directly, but we will put it off as long as we can. Meanwhile let us consider possible answers. The litigants evidently could not *pull* the land, as they could a man. They might, nevertheless, lay hands on it simultaneously. If *manus consortio* is this, it is identical with the act for movable property, an act to which, as we have seen, the name was never applied. But a different name implies rather a different act, and this brings us to another possibility, that the litigants joined hands over the land. Now 'link the hand' is the natural meaning of *manum conserere*. It is very hard to conceive it as meaning anything else. And for etymological reasons alone I cannot help having a strong conviction that this was the act performed. Herein I agree with Poste,¹ who says "the object grasped seems to be the hand of the adversary"; and I hope to show that Gellius's language confirms this view, and does not, as has been supposed by some, favor the other alternative.

Now we must address ourselves to the Gellius passage. It is as follows. After saying that he is going to tell us what he has found out about the meaning of the phrase *ex iure manum consortum*, he goes on, according to our manuscripts:—

7 *Manum conserere. Nam de qua re disceptatur in iure* [in re added by editors] *praesenti, sive ager sive quid aliud est, cum adversario simul manu prendere et in ea re omnibus* [sollemnibus editors] *verbis vindictae, id est vindiciae. Corruptio manus in re atque in loco praesenti*

¹ Gaius, 2d edit., p. 499.

apud praetorem ex duodecim tabulis fiebat, in quibus ita scriptum est :
 9 si qui in iure manum conserunt. Sed postquam praetores, propagatis Italiae finibus datis iurisdictionibus [*these two words variously emended*] negotiis occupati, pacisci [*proficisci editors*] vindiciarum dicendarum causa [*ad added by editors*] longinquas res gravabantur, institutum est contra duodecim tabulas tacito sensu [*consensu editors*], ut litigantes non in iure apud praetorem manum consererent, sed ex iure manum consortum vocarent, id est alter alterum ex iure ad conserendam manum in rem, de qua ageretur, vocaret, atque profecti simul in agrum, de quo litigabatur, terrae aliquid ex eo, uti unam glebam, in ius in urbem ad praetorem deferrent, et in ea gleba, tamquam in toto agro, vindicarent.

The passage begins with two loose words, out of all connexion with their context. No probable way of connecting them with the foregoing or the following words has ever been suggested, and Hertz is undoubtedly right in assuming a lacuna after them. Now the careful reader will perceive that the promised definition of *manum conserere* is altogether lacking. The sentence beginning with *nam* is not this definition, although it has sometimes been taken to be, and writers have consequently inferred that *manus consortio* was joint seizure, and even that the joint seizure of movables described by Gaius was called by this name. This sentence does not even pretend to be a definition of *manum conserere*, but it does pretend to be a definition of *vindicia*. *Vindicia* cannot, however, be meant as a synonym of *manus consortio*, since it applies to land and movables (*sive ager sive quid aliud est*), whereas the *manus consortio* relates to land only. More than this, the *vindicia* here described cannot even include *manus consortio*. Possibly the term *vindicia* would, in its wider use, include the *manus consortio*, though I know of no clear case of this. *Vindiciarum dicendarum causa* in § 9 below is not one, for *vindicias dicere* is merely a technical phrase for ‘pronounce judgment.’ At any rate it seems quite certain that *vindicia* here is employed in a narrower sense, and designates a ceremony distinct from *manum conserere*. For in the first place, *cum adversario simul manu prendere* is irreconcilable with *correptio manus* in the next sentence (that is, the two phrases cannot designate the same act), but as we read on it becomes evident that *correptio manus* relates to the *manus consortio*. Secondly, this *vindicia* takes place in court (*in iure*), whereas *manus consortio* took place — except in the earliest times — out of court. I should not lay much stress on this *in*

iure, because the text is defective just here,¹ if it were not upheld by what follows in § 9. At the end of that section the custom, known also from Gaius, of the vindication of land by means of the *gleba* is mentioned. Let no one suppose that Gellius means this to be the *manus consertio*. For this takes place *apud praetorem*, whereas he has said just above that the *manus consertio* did not (*ut non in iure apud praetorem manum consererent*). There was, then, a vindication of land quite apart from the *manus consertio* — a vindication which took place *in iure* and was performed over a clod. Surely of this and of no other Gellius is thinking when, in § 7, he speaks of claiming land by joint seizure, and lumps it with the claiming of movables. *In iure* is therefore in all probability sound.

It is quite impossible, we see, that this *nam*-sentence in § 7 should be a definition of the *manus consertio* or have anything to do with it. The following words, *correptio manus* etc., certainly refer to it, but they simply give additional facts, and presuppose a definition. The definition must absolutely have preceded, and it is plain that the loose words *manum conserere* at the beginning are a remnant of the missing passage. In the light of the foregoing discussion we may imagine that the first two sections once read, in substance, somewhat as follows : —

Manum conserere est manum adversarii corripere in agro de quo litigatur ; ita enim maiores nostri pro vindicia faciebant quae posteriore tempore in iure fiebat et volgo sic vocatur. Nam de qua re disceptatur in iure in re praesenti, sive ager sive quid aliud est, cum adversario simul manu prendere et in ea re sollemnibus verbis vindicare, id est vindicia. Correptio manus in re atque in loco praesenti etc.

There is still one incoherency in Gellius's account. The litigants, he tells us, when the praetor became too busy to go with them to the land, 'no longer did the *manus consertio* in court, but one summoned the other out of court to perform the ceremony. They then went together to the land, and ' — what next ? Joined hands, we expect to hear. No, but 'took a clod, brought it back into court, and vindicated over it there.' Gellius appears to mean that, although there was a summons *ad conserendam manum*, the consertion itself was entirely omitted

¹ It would obviously be open to us to write *disceptatur in re praesenti* instead of *disceptatur in iure (in re) praesenti*.

and a different ceremony substituted. They employed, — so we are given to understand — the clod-form of vindication for land, while retaining the verbiage of another, obsolete, form. But this statement, even if true, cannot be historically complete. Gellius evidently omits at least one intermediate stage. There must surely have been a time when the challenge to leave court *ad conserendam manum* was followed by an actual performance of the thing specified; the substitution of the clod-ceremony must have been later. But Gellius's language is, perhaps, capable of another interpretation; he may mean that both acts were performed, — the *correptio manus* and the bringing of the clod. The ceremony with the clod would then be an addition, not a substitution. Now a double process of vindication would seem to us needless; nevertheless such a thing might have been thought necessary at the period when the praetor first ceased visiting the land and witnessing the 'hand-grapple' in person. In itself this alternative is more probable than the first, whether it be Gellius's meaning or not.

I cannot forbear mentioning a third possibility. It may be that Gellius has confused two things; that vindication with the clod was really a matter quite apart from *manus consortio*, the one being employed in some cases, the other in others. It must be understood that the whole affair — clod as well as hand-grapple — was to Gellius a thing of the past. This is clear from the language of Gaius, a contemporary of Gellius, who uses the past tense in describing all these acts of vindication. Gellius, himself, at the beginning of the chapter, says of the words *ex iure manum consortum* that they are *verba ex antiquis actionibus, quae, cum lege agitur et vindiciae contenduntur, dici nunc quoque apud praetorem solent*, and goes on to describe the difficulty he had to ascertain their meaning. Though still in use, the words were a mere form, corresponding to no real act. Even at Cicero's time the same was probably true. From the dialogue in the *Murena* we may suspect that the whole visit to the land had become a fiction, the parties simply going a short distance and returning. The jurist L. Cincius, in a passage to be quoted immediately, speaks of the clod-bringing as if it were an obsolete custom, and Cincius lived at about Cicero's time. It would, therefore, not be an incredible supposition that Gellius, reading his lawyers' books, had got two processes confounded.

With this possibility in mind, we naturally turn to the scene in the Murena oration, to see whether it gives any hint of a clod. It certainly does not. With the return of the parties, the ceremony of vindication seems to be complete. However, it may be that Cicero simply skips this part of the process. One rather striking coincidence could be adduced in support of this opinion. In Festus, p. 305 M. (quoted in footnote on p. 156), we are told that litigants were bidden *vindicias sumere* in the presence of witnesses (*superstitibus praesentibus*). We should hardly know what *vindicias sumere* meant, were it not for the statement of Cincius (Festus, p. 376 M.), *vindiciae olim dicebantur illae quae ex fundo sumptae in ius adlatae erant*. From this it appears that the clod was called *vindiciae*, and that *vindicias sumere* is to take the clod from the farm. Now the command to do this *superstitibus praesentibus* reminds us strongly of the command of the praetor in the Murena scene (see p. 156), and suggests that in that command the fetching of a clod may be implied. On the other hand, it may be urged that the simple *manus consortio*, without the clod process, would also have required witnesses.

I can see no way of deciding positively among these three understandings of the matter, but confess to a leaning towards the second, — the assumption that in post-Decemviral times, when the magistrates gave up visiting the land, the clod ceremony was superadded to the other. This clod process was called *vindicia*, and was probably performed by joint seizure, as on a movable.

This discussion of the *manus consortio* has necessarily been a little complicated, and a word of recapitulation may not be out of place. The points made are these. *Manum conserere* was a form of vindication that related to *land* (and presumably other immovables), and corresponded to the joint seizure of movables. It was performed out of court, before witnesses, except in very early times, when the magistrate used to go to the land. The words naturally mean 'link the hand,' and Gellius calls the act *correptio manus*. We infer that the act was a joining of hands, and no statement of the ancient writers controverts this view. We may distinguish at least three periods of the usage. First the magistrate went with the litigants to the spot to see the 'hand-grapple' performed. Secondly the litigants went there with witnesses and performed it, and (if we have rightly chosen among puzzling alternatives) brought back a clod for

a second process in court. Thirdly the actual performance of these ceremonies was omitted, an empty form of words being still kept up.

The usual term for what we have called the 'joint seizure' of movables, as opposed to the *manus consertio*, appears to have been *vindicia*. But we may shrewdly suspect that it was originally called *adsertio*, *adserere*,—words which in the literary period were confined to a single kind of process, the *vindicatio in libertatem* or *in servitutem*.¹

We must not forget to speak of the variant *manu consertum*, which manuscripts give us in several places.² This may of course be nothing but archaic spelling. But it may also have been an actual form, used along with the other.³ Its meaning would be just the same. Either *consere mecum manu* or *consere mecum manum* might be said. In like manner *adserere alicui manum*⁴ and *adserere aliquem manu* were both known.

The interpretation of this hand-joining as a pulling-match is not absolutely necessary, and I have wondered at times whether it might not be taken as symbolizing a scuffle or a wrestling-match. This would be the form which a quarrel about land would naturally assume; each claimant would treat the other as a trespasser, and try to put him off the premises. But the fact that *one* hand was used seems fatal to this. The plural *manus* is never used in this locution. A pulling seems indicated after all, and we must suppose that it arose as a substitute for a free scuffle, suggested by the analogy of the pulling of movables. This hand-pulling, it is interesting to observe, became a common figure for a battle, as did the rope-pulling of the Greeks. The oldest occurrence of the metaphor, *contra conserta manu*, Plaut. M. G. 3, shows the singular, in agreement with the legal formula. Varro L. L. VI, 64, *manu conserere cum hoste*, also uses

¹ In the Oscan Tabula Bantina, the words *manim aserum* (= *manum adserere*) seem to be employed in reference to seizure of the person in execution for debt (*manus iniectio*).

² The Mss. give *manum* in Gell. XX, 10 in six places, also in Cic. Fam. VII, 13, 2. *Manu* in Varr. L. L. VI, 64; Cic. Mur. 12, 26 (twice); Gell. XX, 10, 9 (once). Both forms Cic. de Orat. I, 10, 41; Mur. 14, 30; Gell. XX, 10, 4; Probus in Keil's Gram. Lat. IV, p. 273.

³ Hardly, however, the only form. Note *ad conserendam manum* in Gellius.

⁴ Festus s.v. *sertorem* (p. 340), Paulus s.v. *asserere* (p. 25).

the singular, and so always Caesar, Nepos, and probably also Cicero.¹ Expressions like *manus consereret* first appear in Sallust and Livy, who, however, also use the singular.² It is hard to say whether this is a simple perversion of the original term, or is due to an admixture of a wrestling-metaphor. *Manus conserere* ('lock the arms') might have been said of the ἀφή of wrestlers, but there is no evidence that it was. Another faded-out metaphor based on the pulling-contest is *contendere, contentio*.

This inquiry has taken us far afield, but the patient reader will now understand the nature of the hypothesis — I repeat that it is only an hypothesis — by which I should like to account for the enigmatical Homeric expression from which we started. 'Faustrecht' is the oldest law, and the earliest administration of justice consisted simply in seeing fair play between combatants. The free fight gave way (with great saving to life and limb) to a regulated pulling; the disputed object belonged to him who could pull it away from the other man. The pulling was then extended to contests about immovables and abstract questions, the victory being his who could pull his opponent over a scratch. Then came interference of magistrates, and questions of δίκη and ius. But it was still thought needful that a form of pulling should be gone through, before the magistrate began his inquiry. To this point the Romans had got when we first know them, and this point, as I imagine, the Greeks had reached in the Homeric age, the difference being that the Greeks used a rope when a movable object was not in dispute, while the Romans did not. I am far from asserting that every civilized community has gone through all the above stages. But such, I conceive, was the course of things in ancient Italy and Greece.

There are various other difficulties in the trial scene in Σ, which we shall not attempt to deal with. The relation, for instance, of the ἴστωρ to the γέροντες, and the significance of the two talents of gold. Skilful discussions of these, by Hofmeister and Leaf respectively, may be read in the *Zeitschrift für vergleichende Rechtswissenschaft*, vol. II, p. 443 ff., and in the *Journal of Hellenic Studies*, vol. VIII, p. 122 ff.

¹ In the spurious oration *Antequam iret* (8, 20) occurs *manus conseratis*.

² Noteworthy is *conseruntque dextras*, Stat. Silv. i, 6, 50.

I wish I could strengthen this surmise of mine by citing some survivals of the terminology of the supposed custom in Greek. There are indeed references to pulling-matches. One of these is the much-vexed passage Pindar Pyth. II, 90, *στάθμας δέ τινας ἐλκόμενοι περισσᾶς*, where the meaning is 'dragging at some rope beyond their strength.' But I have not found anything that looks like judicial pulling. Nevertheless I will cite one group of words. The game called *σκαπέρδαν* *ἔλκειν* has been mentioned above (p. 152). Hesychius adds that *πάν τὸ δυσχερὲς σκαπέρδα λέγεται, καὶ ὁ πάσχων σκαπέρδης*. He has also a gloss *σκάπαρδος ὁ ταραχώδης καὶ ἀνάγωγος*. That is, *σκαπέρδα* or *σκαπάρδα* meant 'tug-rope,' a desperate job was called a 'tug,' a man in straits a 'tug-puller,' a headstrong horse a 'tugger.' Now in a well-known fragment of Hipponax (Frag. 1 Bgk.), the poet calls on Hermes with the words *δεῦρό μοι σκαπαρδεῦσαι*. Above this last word, in the codex which contains this fragment, is written the gloss *συμμαχῆσαι*, which is right enough, for *σκαπαρδεῦσαι* certainly means 'pull on the rope for me.' Now there are three other Hesychian glosses that contain similar forms:

σκαπερδεῦσαι ὀλιδορῆσαι.

σκαρπαδεῦσαι κρῖναι.

καπαρδεῦσαι μαντεύσασθαι.

In the second, *σκαρπαδεῦσαι* is surely miswritten for *σκαπαρδεῦσαι*. Here one might imagine that there lurked in *κρῖναι* an allusion to judicial rope-pulling, if it were not far more probable that all these glosses relate to the Hipponax passage, and are wild guesses about the last word in it. It seems hardly chance that all end in *-σαι*.

As a corollary to this discussion it may be pointed out that the proposed interpretation of Σ 501 makes it possible to separate formally the word meaning 'rope' from that meaning 'end.' Outside of Homer the word for 'end' is an *s*-stem, and with Σ 501 out of the way there is no reason why it should not be so in Homer. The form *πείραρ* can be restricted to the meaning 'rope.' In short, we may distinguish two words:

- | | | | |
|----|---------------------------|-------------------------|----------|
| 1. | <i>πείραρ</i> , | plural <i>πείρατα</i> , | 'rope.' |
| 2. | { <i>πείρας</i> (Pindar), | plural <i>πείρατα</i> | } 'end.' |
| | { Aeol. <i>πέρρας</i> , | plural <i>πέρρατα</i> | |
| | { Att. <i>πέρας</i> , | plural <i>πέρατα</i> | |

The Homeric occurrences of these words are :

‘Rope.’

Σ 501. Already discussed.

Ν 358. τοὶ δ’ ἔριδος κρατερῆς καὶ ὁμοίου πολέμοιο
 πείραρ ἐπαλλάξαντες ἐπ’ ἀμφοτέροισι τάνυσσαν,
 ἄρρηκτόν τ’ ἄλυτόν τε, τὸ πολλῶν γούνατ’ ἔλυσαν.

A difficult passage. I incline on the whole to understand a rope-pulling between the two armies helped by the gods,—substantially Heyne’s interpretation. Ἐπί then goes with τάνυσσαν. This conception is strongly suggested by the expression ἔριδος καὶ πολέμου πείραρ, especially when the similar phrases in Λ 336, Ο 413, Μ 436, Υ 101,¹ Ξ 389, Π 662, are taken into account. In all these places there is the underlying idea of a pulling-match. The difficulty is that ἄλυτον in the next line is irreconcilable, and if we adopt this view, verse 360 must be bracketed as a later addition.²

ε 289. ἐκφυγεῖν μέγα πείραρ οὐζύος, ἧ μιν ἰκάνει.

‘Noose of tribulation.’

Η 102. αὐτὰρ ὕπερθεν

νίκης πείρατ’ ἔχονται ἐν ἀθανάτοισι θεοῖσιν.

The gods hold the ropes which decide victory. A ‘tug of war’ is certainly intended here.

Η 402, Μ 79, χ 33, 41. ὀλέθρου πείρατ’ ἐφῆπται (ἐφῆπτο).

The ‘noose of death’ is fastened to them. The metaphor from snaring birds or animals.

Ζ 143, Υ 429. ἄσσον ἔθ’ ὥς κεν θᾶσσον ὀλέθρου πείραθ’ ἵκηαι.

‘That thou mayst be caught in death’s noose.’

¹ Here, however, τέλος does not mean ‘rope-end,’ but πολέμου τέλος is used as in Π 630.

² The only possible alternative is to revert to the conception of older editors, and understand a ‘noose of destruction.’ I should then understand that Zeus and Posidon ‘throw reciprocally (that is, each to the other side, ἐπαλλάξ) the noose of war, and tighten it round Greeks and Trojans.’ Two nooses would, of course, be intended. I do not feel sure that this is not right. Quite impossible, to my mind, is the complicated explanation which has found favor with most recent editors, by which the two gods pull at opposite ends of a rope in which the combatants are somehow implicated. This is meaningless and corresponds to nothing in actual life.

μ 51, 162, 179. ἐκ δ' αὐτοῦ πείρατ' ἀνήφθω (ἀνήπτων).
 'Let the ropes be made fast to the mast.'

γ 433. ὅπλ' ἐν χερσὶν ἔχων χαλκῆϊα, πείρατα τέχνης.

The smith's tools are called the 'ropes of his art' — a figure borrowed from seamen's parlance. So our figurative expression 'know the ropes.'

Ψ 350. ἐπεὶ οἱ παῖδὶ ἐκάστου πείρατ' ἔειπεν.

Nestor 'showed the ropes' of each part of the race to Antilochus. The metaphor as in the last.

'End.'

Ξ 200, 301, δ 563. πείρατα γαίης.

ι 284. ὕμης ἐπὶ πείρασι γαίης.

λ 13. ἦ δ' ἐς πείραθ' ἴκανε βαθυρρόου ὠκεανοῦ.

Θ 478. οὐδ' εἴ κε τὰ νείατα πείραθ' ἴκηαι.
 γαίης καὶ πόντοιο.

ψ 248. οὐ γάρ πω πάντων ἐπὶ πείρατ' ἀέθλων
 ἤλθομεν.

As the plurals of these words agree in form, so do the verbs derived from them: *πειραίνω* 'fasten,' 'bind' (χ 175, 192; cp. Hymn. Hom. III, 48), and *πειραίνω* (= *περαίνω*) 'complete' (μ 37; borrowed Soph. Trach. 581).

It will be perceived that in the above distribution, we have made more of the 'rope'-meaning than is ordinarily done, and recognized it in more passages. Modern editors, it seems to me, show a certain disinclination for this meaning, and will admit it only under compulsion. They follow in this the ancient interpreters of Homer. I may be wrong about one or two places. Only I must enter strong protest against one thing, — a straddling interpretation, which assumes both meanings (say 'rope' and 'issue') at once. Either the word means 'rope' in a given place or it does not.

With *πείραρ* 'rope' thus formally distinguished from *πέρας*, its etymology becomes a separate question. It *may* be an equivalent formation from the same root, with a specialized meaning. It is just possible to get from 'end' to 'rope-end,' if we suppose the word to

be a technical sailors' term. This would differ but slightly from the common view, which throws the two words entirely together. Merry and Riddell on μ 51 make a vigorous plea for this. They cite *endje* as a German sailors' term. 'Rope-end' will certainly fit (instead of 'rope') in all the Homeric places listed above, except N 359, where both gods (if we accept the tug of war interpretation) pull on one *πείραρ*. But *πείραρ* may also be wholly unconnected with *πέρας*. Doederlein suggested that it might have to do with *πείρις* 'basket.' The notion of 'plaiting' would be common to the two.

However this may be, both the meaning 'rope' and the form *πείραρ* disappeared from Greek at an early time. *Πείραρ* indeed is not found after Homer; *πείρατα* is used in the Homeric Hymn to Apollo 129, of the swaddling-bands of the infant god (*λύνοντο δὲ πείρατα πάντα*). Also, still with the 'rope'-meaning, in a verse of an unknown poet, Stob. Ecl. I, 2, 9, *Ζεὺς ὁ καὶ ζωῆς καὶ θανάτου πείρατα νωμῶν*.¹ Pindar's *πείρατ' ἀέθλων δείκνυεν*, Pyth. IV, 220, looks back to Ψ 350 as well as to ψ 248. It is hard to tell which meaning the poet had in mind. Not quite so doubtful is *πολλῶν πείρατα συντανύσαις ἐν βραχεῖ*, Pyth. I, 81. Fennell recognizes that this somehow pertains to the "handling of ropes"; Gildersleeve suggests that the twisting of strands by a ropemaker is meant. But the context of this last passage warns me to desist.

¹ Put by Nauck among the Tragic Adespota (472). But is it not a dactylic hexameter, *Ζεὺς (γὰρ) ὁ καὶ θανάτου καὶ ζωῆς πείρατα νωμῶν*?